1948.

File No. Public Safety Ordinance 17/48

Legal DEPARTMENT

B BRANCH

K

Subject:—

Rules and notifications under the

Public Safety Ordinance

Act, 1948

F. 6 (E)

File No. Public Safety Ordinance 17/24

Std. Sectt. Slip 24 B c.

473-B

C O N T E N T S.

Legal Department File No. Public Safety Ordinance II/48

Sr. No.	Compilation No.	Subject	Pages
		Rules & Notification under the Public Safety Ordinance Act, 1948	
1.	D.No. 521-Conf1 1-10-48	Rule 7 Whether order directing a detention of any person under --- shouldbe issued	1
2.	O.No. 10299 3-11-48	Sec. 3(1) Whether any rules can be made under --- for the control of arms, ammunitions, Military stores etc.	3-4
3.	O.No. 673/Conf1 11-12-48	Held that it will not be possible for the Provincial Govt. to make any rules in respect of the control of arms, fire-arms, & ammunitions .	

Mjr/19/5 22/12/56

5 C.

Legal Department

There is no need to issue any formal order directing a detention of any person under the rules. The person concerned will already have been detained by or under the authority of any officer in the service, civil or military, of the Central Government or of the Government of any Province under rule1 of the rules at page 69 ante. What the Provincial Government is to under rule 2 is to determine the place of detention of each person taken into custody in virtue of rule 1 and to specify the period for which he shall be detained and further to specify the conditions as ~~xxxdetainedxxandxfurthxerxtoxxspecifyxthexconditionsxxxxxx~~ to maintenance, discipline and the punishment of breaches of discipline subject to which he shall be so detained. All the above functions can be performed by the Provincial Government by an executive order. There is, however, no legal objection to issue general orders on the subject on the lines of the Bombay Conditions of Detention Order, 1948

Sd/- J.R.Dharandhar
20/9
Additional Secretary to Governmen

O.C.

U.O. to H.D. (spl), No. 331-confil dated the 1st October 1948

Mjr/19/5

4 C.

The question for consideration is whether any rules can be made under the Public Safety Ordinance, 1948, for the control of arms, ammunitions, military stores etc.

2. Sub-section(1) of section 3 of the Public Safety Ordinance, 1948, empowers the appropriate Government to make rules as appear to it to be necessary or expedient for securing the public safety, the maintenance of public order, the maintenance of supplies and services essential to the life of the community or for preventing any grave menace to the security of India. Sub-section (2) of that section specifies the matters with respect to which the rules may be made without prejudice to the generality of the powers conferred by sub-section (1). Section 2 of the Ordinance defines "appropriate Government". According to that definition "appropriate Government" in a Governor's Province means the Provincial Government in relation to any of the matters enumerated in the Provincial and Concurrent Legislative Lists in the Seventh Schedule to the Government of India Act, 1935, and the Central Government in relation to any other matter. Clause (xxiv) of section 3(2) of the Ordinance mentions the requisitioning of any property, moveable or immoveable, including the taking possession thereof and the issue of any orders in respect thereof. clause (xxv) refers to the prohibiting or regulating the possession, use or disposal of explosives, inflammable substance, arms and ammunitions of war. There is no doubt that in virtue of these provisions the appropriate Government can make rules providing for the matters mentioned in clauses(xxiv) and (xxv) . In virtue of the definiti n of "appropriate Government" it will not be possible for the Provincial Government to make any rules under clauses (xxiv) and (xxv) in respect of arms, fire arms, ammunition and explosives since those matters are not enumerated either in the Provincial or Concurrent List . They fall in List I It is, therefore, the Central Government which can make rules for the requisitioning and control of arms, fire-

arms, ammunition and explosives.

Sd/- J.R.Dhurandher
3/11

o.c. Additional Secretary to Government.

..R. to H.D. , No. 10299 , dated the 3rd November 194[illegible]

Mjr1/19/5

4 C.

The view taken in para. 4 of the H.D's note at pages 57-60 ante that R.L.A's opinion No. 7247, dated the 2nd August 1948 conflicts with the opinion at pages 55-56 ante (U.R. to H.D. No. 10299, dated the 3rd November 1948) is not correct. As stated in R.L.A's opinion referred to above, entry 29 in List II is wide enough to control the distribution of even arms; for any legislation providing for distribution of goods which may also include arms will be in pith and substance dealing with the subject of distribution of goods. In considering the question of the validity of such legislation, the Courts in each case will consider what the substance of the Act is and attribute it to the appropriate List according to its true character (see the case of Prafulla Kumar Mukharjee and other Vs. The Bank of Commerce, Ltd., Federal Law Journal, Vol X, p.34). Legislation dealing with the distribution of goods will therefore in pith and substance fall in entry 29 of the Provincial Legislative List even if such legislation includes provisions for the distribution of arms. In the present case it is sought to make rules for the control of arms, ammunition, military stores. etc. Such rules will be in substance rules relating to the subject of "arms, fire-arms, ammunition" enumerated in entry 29 in the Federal Legislative List. Under the Public Safety Ordinance, the "Appropriate Government" has been defined to mean in a Governor's Province the Provincial Government in relation to any of the matters enumerated in the Provincial and Concurrent Legislative Lists, and the Central Government in relation to any other matter. As provisions relation to the requisitioning and control of arms, fire-arms and ammunition will in substance fall in entry 29 of the Federal Legislative List, the appropriate Government to make rules in respect of such matters will be the Central Government, and, as already pointed out in the opinion at pages 55-56 ante, it will not be possible for the provincial Government to make any rules in respect of these

matters.

Sd/- J.R.Dhurandhar
9/12

o.c.

Additional Secretary to Government.

U.R. to H.D. No. 673-Confl, dated the 11th December 1948.

Mjr/19/5

4 C.